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Joan Marsh
Director
AT&T Federal Government Affairs

Suite 1000
1120 20th St. NW
Washington, DC 20036
202 457-3120
FAX 202 457-3110

July 29, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TWB-204
Washington, DC 20554

Re: Notice of Written Ex Parte
In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications, Inc., Transferee
CC Docket No. 98-141

Dear Ms. Salas:

This is to inform you that today a written ex parte in the form of the attached letter and enclosures is being submitted to Thomas Krattenmaker, William Dever, and Michelle Carey.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

Joan Marsh

No. of Copies rec'd 0+1
List ABCDE

cc: Thomas Krattenmaker
William Dever
Michelle Carey

Joan Marsh
Director
AT&T Federal Government Affairs

Suite 1000
1120 20th St. NW
Washington, DC 20036
202 457-3120
FAX 202 457-3110

July 29, 1999

Thomas Krattenmaker
Director of Research
Office of Plans and Policy
Federal Communications Commission
445 Twelfth Street, SW, Room 7-C324
Washington, DC 20554

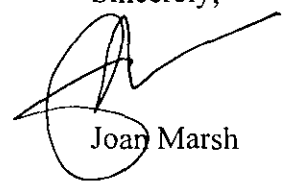
Dear Mr. Krattenmaker:

Per your request, attached please find three state commission decisions supporting AT&T's position that Condition XI of the proposed merger conditions violates Section 252(i) of the Act. That provision unambiguously states that incumbent LECs must provide "any interconnection service, or network element provided [pursuant to an interconnection agreement] to which it is a party to any other requesting telecommunications carrier *upon the same terms and conditions as those provided in the agreement.*" 47 U.S.C. 252(i) (emphasis added). Thus, contrary to Condition XI, the Act expressly requires that if Applicants offer a discounted loop or the platform to one competitive LEC, they must make that same discounted loop or platform available to all other carriers that want it.

As we discussed, several state regulatory commissions have held that Section 252(i) forbids incumbent LECs from entering into special "side deals" but instead requires an incumbent LEC to provide network element combinations to all competitive LECs – even if the element or combination offered is not required by Section 251 of the Act – if that incumbent LEC offers the network element or combination to any competitive LEC. *See, e.g.*, Order, Approval of the Interconnection Agreement Negotiated by BellSouth Telecommunications, Inc. and the Other Phone Co. Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996, Case No. 98-165 (Ky. PSC June 30, 1999); Order on Negotiated Interconnection Agreement, Resale Agreement Between BellSouth Telecommunications, Inc. and the Other Phone Co., Docket No. P-55, SUB 1144 (N.C. PUC June 23, 1999); Order, In Re: Notice of Cancellation of Previously

Approved Interconnection Agreement Executed Between The Other Phone Company, d/b/a Access One, Inc. and BellSouth Telecommunications, Inc., Docket U-3964 (Al. PSC July 15, 1999). Applying the same rationale employed by these Comissions, the caps contained in Condition XI render the condition unlawful.

Sincerely,



Joan Marsh

cc: Mr. Dever
Ms. Carey

STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 991
MONTGOMERY, ALABAMA 36101-0991

JIM SULLIVAN, PRESIDENT
JAN COOK, ASSOCIATE COMMISSIONER
GEORGE C. WALLACE, JR., ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR
SECRETARY

IN RE: Notice of Cancellation of Previously Approved Interconnection Agreement Executed Between The Other Phone Company, d/b/a Access One, Inc. and BellSouth Telecommunications, Inc. and Request For Approval of a New Interconnection Agreement Between the Parties.

DOCKET U-3964

FURTHER ORDER

BY THE COMMISSION:

I. INTRODUCTION AND BACKGROUND

By Order entered in this cause on June 11, 1999, the Commission set forth in detail the procedural background of this Docket and discussed at length the positions advanced by the parties to this proceeding. In rendering our determination herein, we have carefully considered the positions of the parties as they were discussed in said Order. We have accordingly determined that for ease of reference, we will include immediately below a restatement of the procedural background of this Docket as set forth in the Commission's June 11, 1999 Order.

On or about February 19, 1999, BellSouth Telecommunications, Inc. (BellSouth) and The Other Phone Company, d/b/a Access One, Inc. (Access One) filed with the Commission an interconnection agreement which those parties had voluntarily negotiated and entered into. BellSouth and Access One sought Commission review and approval of said agreement pursuant to the provisions of §252(e) of the Telecommunications Act of 1996 (the Act or the 1996 Act).

On or about March 16, 1999, AT&T Communications of the South Central States, Inc. (AT&T) filed comments in opposition to approval of the aforementioned BellSouth/Access One interconnection agreement. AT&T recognized that the agreement covered services and capabilities to be provided throughout BellSouth's

serving area, but maintained that only a portion of the entire agreement had been filed with the Commission for approval. In particular, AT&T alleged that the terms of the agreement which purported to cover BellSouth's provision of Unbundled Network Element (UNE) combinations had been omitted thereby precluding review by interested parties and the Commission in violation of §252(e) of the Act and Federal Communications Commission (FCC) Rule 47 CFR §51.303. AT&T accordingly urged the Commission to require BellSouth to submit the complete UNE combinations agreement for review by the Commission and to decline approving the incomplete agreement in light of the significant omission of those provisions relating to BellSouth's obligations to make UNE combinations available.

Prior to the Commission taking any action to approve or reject the BellSouth/Access One interconnection agreement submitted on February 19, 1999, BellSouth and Access One negotiated and entered into a "new" interconnection agreement which the parties filed with the Commission for approval on April 19, 1999[1] (the "new" agreement, or the agreement). At the time the parties filed their "new" agreement, they notified the Commission that they had mutually agreed to the cancellation of the February 19, 1999 interconnection agreement and considered said agreement null and void.

On or about May 13, 1999, AT&T filed a Motion for Leave to Intervene in this cause. AT&T alleges that, like the February 19, 1999 interconnection agreement submitted by BellSouth and Access One, the "new" agreement submitted by those parties on April 19, 1999 also omits the agreement of BellSouth and Access One concerning BellSouth's provision of UNE combinations. AT&T argues that the failure of the "new" agreement to incorporate the terms and conditions regarding BellSouth's provision of UNE combinations to Access One is in violation of §252(e) of the Act and FCC Rule 47 CFR §51.303. AT&T alleges that both the Act and the FCC's rules require scrutiny of BellSouth's entire agreement with Access One in order to determine

[1] The Commission's June 11, 1999 Order incorrectly referenced the submission date of the "new" agreement as April 16, 1999. As noted above, the correct filing date for that document is April 19, 1999.

whether it is discriminatory or whether implementation of the agreement would be inconsistent with the public interest, convenience and necessity.

AT&T asserts that BellSouth's attempt to enter into a secret interconnection agreement should not be permitted by the Commission and urges the Commission to require BellSouth to disclose all the terms of the interconnection agreements it enters with telecommunications carriers. Specifically, AT&T requests that the Commission require BellSouth to provide the Commission with the entire agreement it entered into with Access One, including any related agreements which deal with the provision of UNE combinations.

On or about June 2, 1999, the Southeastern Competitive Carriers Association (SECCA) Petitioned for Leave to Intervene in this cause on behalf of its membership[2]. SECCA alleges that §252(e) of the Act requires that any interconnection agreement adopted by negotiation or arbitration must be submitted to the appropriate state Commission for approval or rejection. SECCA further alleges that FCC Rule 47 CFR §51.303 requires that all interconnection agreements between an incumbent LEC and telecommunications carriers shall be submitted by the parties to the appropriate state Commission for approval pursuant to §252(e) of the Act. SECCA maintains that BellSouth has failed to submit the entire agreement it entered with Access One in effect blinding SECCA and its members from possible provisions that may impact them.

SECCA further alleges that approval of BellSouth's "partial interconnection agreement" will deny SECCA and its members access to the entire BellSouth/Access One interconnection agreement in clear violation of §252(i) of the Act. SECCA represents that its members are entitled to access to the entire BellSouth/Access One agreement to discern whether there is any discrimination against CLECs who are not parties to the agreement and whether the agreement is consistent with the public interest, convenience and necessity.

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[2] SECCA is a coalition of the following competitive local exchange telecommunications providers, interexchange carriers and other interested entities: AT&T Communications of the South Central States, Inc. (AT&T); MCI Worldcom Telecommunications, Inc.; and MCI Metro Access Transmission Services, Inc. (collectively MCI); ITC DeltaCom Communications, Inc. (DeltaCom); Business Telecom, Inc. (Business Telecom); The Competitive Carriers Association (CCA); e.spire Communications, Inc. (e.spire); ICG Telecom, Inc (ICG); Intermedia Communications, Inc. (Intermedia); LCI International Telecom Corporation (LCI International); NEXTLINK; Telecommunications Resellers Association (TRA); and Time Warner of the Mid-South L P. (Time Warner).

DOCKET U-3964 - #4

By filing of June 8, 1999, BellSouth submitted a response to AT&T 's Motion for Leave to Intervene. In said filing, BellSouth argues that AT&T's claim that BellSouth must file its separate, voluntarily negotiated agreement with Access One to "combine" certain unbundled network elements on behalf of Access One pursuant to §252(e) of the Act is incorrect. BellSouth asserts that the separate, voluntarily negotiated agreement it entered with Access One addressing UNE combinations is a "professional services" arrangement whereby BellSouth has agreed to combine certain unbundled Network Elements for an agreed upon fee. BellSouth argues that said "professional services" arrangement does not encompass in any way BellSouth's obligations under the Act and is, therefore, outside the scope of the Act. BellSouth represents that it will voluntarily offer similar arrangements to any other carrier including AT&T, and will provide a copy of its private agreement with Access One to the Commission for an *in camera* review and inspection.

Also on June 8, 1999, SECCA filed its comments concerning the interconnection agreement submitted by BellSouth and Access One. In those comments, SECCA alleges that the agreement at issue is an "agreement arrived at through negotiation" under §252(a) of the Act which covers telecommunications services and Network Elements to be provided by BellSouth to a competitive local exchange carrier, Access One. SECCA also points out that the agreement has been filed pursuant to §252(e) of the Act.

According to SECCA, the problem with the agreement is that it is not reported to the Commission in its entirety because the terms of the agreement which purport to cover BellSouth's provision of combinations of UNE's have been omitted from the filings. SECCA alleges that this omission is in clear violation of §252 of the Act due to the fact that it precludes review of the entire agreement between BellSouth and Access One by interested parties and the Commission. SECCA and its members urge the Commission to require BellSouth to file the agreement and all future agreements in their entirety for requisite Commission review and to decline to approve this agreement or any other that is not submitted to the Commission in its complete form. As an

alternative. SECCA recommends that the Commission hold approval of the BellSouth/Access One interconnection agreement in abeyance pending the filing and review of the "professional services" agreement referenced therein.

After considering the aforementioned filings of the parties, we entered our June 11, 1999 Order in this cause. We noted therein our belief that the issue of whether the entirety of the interconnection agreement reached between BellSouth and Access One must be submitted for Commission approval is an issue of law which the Commission can rule on based on written pleadings submitted by the parties. We nonetheless sought input from BellSouth, Access One, AT&T and SECCA concerning whether a hearing should be conducted. The aforementioned parties were instructed to submit written position statements on or before June 17, 1999 indicating whether they desired for this matter to go to hearing, or had no objection to the Commission rendering a determination based on written submissions by the parties.

BellSouth, Access One, AT&T and SECCA all indicated in filings made with the Commission their consent to a waiver of a public hearing in this cause in favor a determination from the Commission based on written submissions by the parties. Pursuant to a Procedural Ruling issued on June 18, 1999, the parties were instructed to submit any additional information they desired no later than June 29, 1999.

On June 29, 1999, AT&T filed Additional Comments in support of its position. AT&T also adopted by reference the arguments it raised in the pleadings it previously submitted in this cause.

Access One also filed comments on June 29, 1999 which responded to the objections previously raised by AT&T and SECCA. Access One argues that it and BellSouth are in full compliance with §252(e) of the Act since the separate, voluntary arrangement entered into between the parties contains only terms and conditions concerning certain professional services to be performed by BellSouth for Access One outside any requirements of the Act or the FCC's rules. Access One maintains that no service that will be performed under such a private, separate arrangement falls within BellSouth's obligations to file the separate agreement with the Commission or to

otherwise disclose the contents of the arrangement or make them available to other companies. Access One accordingly urges the Commission to deny AT&T and SECCA's objections and approve the interconnection agreement entered between Access One and BellSouth without further delay.

BellSouth submitted a statement adopting as its comments its Response to AT&T's Renewed Objection which was originally filed by BellSouth on June 8, 1999. SECCA did not submit additional comments.

II. FINDINGS AND CONCLUSIONS

As noted in our June 11, 1999 Order in this cause, the Commission's duties and responsibilities with regard to analyzing voluntarily negotiated interconnection agreements submitted to it for review are governed by various provisions of §252 of the 1996 Act. In particular, §252(e)(2)(A) mandates that a state commission may reject a voluntarily negotiated interconnection agreement only if it finds that such agreement, or a portion thereof, discriminates against a telecommunications carrier not a party to the agreement, or if it finds that the implementation of such agreement, or a portion thereof, is not consistent with the public interest, convenience and necessity. The Commission is required by §252(e)(1) to issue written findings as to any noted deficiencies and is required by §252(e)(4) to render its determination of approval or disapproval within 90 days of the submission of agreements entered through negotiation.

The disputed language of the interconnection agreement under review is found at Section 1.1.2 on Page 2 of Attachment 2. The challenged portion of Section 1.1.2 states as follows:

> ...BellSouth is willing to provide as a discretionary offering and above and beyond its obligations under the Act, the engineering and technical expertise necessary to combine certain unbundled Network Elements on behalf of Access One for the purpose of Access One providing an end to end telecommunications service over BellSouth's Network Elements. Such professional services shall be pursuant to a separate agreement. This offer to pursue a separate agreement is only valid under the condition that its inclusion by reference does not subject the separate contract to regulation by federal or state Commissions. Any request by either party to a regulatory body to arbitrate conditions of the separate agreement will invalidate this offer.

After considering the positions advanced by the parties in their written submissions and reviewing the above language in light of the governing statutory provisions, we conclude that the separate agreement contemplated in the above language addresses a matter which is required by the Act to be included in the negotiated interconnection agreement which the parties submitted to the Commission for review. While it is true that parties to negotiated interconnection agreements may negotiate and enter into binding agreements without regard to the standards set forth in §§251(b) and (c) of the Act, §252(a)(1) of the Act mandates that such agreements *shall* include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement reached between the parties. A further requirement of §252(a)(1) is that *any* such negotiated interconnection agreement shall be submitted to the appropriate state Commission for approval pursuant to the requirements of §252(e).

From the foregoing, it is apparent that once BellSouth, either voluntarily or as required by law, reaches agreement through negotiation with a competing carrier to provide any interconnection, service or network element, the terms and conditions of the provision of same must be incorporated into a negotiated interconnection agreement and submitted for Commission review pursuant to §§252(a) and (e) of the Act[3]. It is also apparent that the separate agreement that would result from approval of the disputed language set forth above would allow BellSouth and Access One to circumvent the approval process outlined in the cited statutory provisions which are implemented and reinforced by the FCC's Rule 47 CFR §51.303.

An additional problem created by the separate agreement contemplated in the disputed language set forth above is that such an arrangement would allow BellSouth to circumvent the requirements of §252(i) of the Act. That provision mandates that a local exchange carrier which is a party to an approved agreement must make available any interconnection, service or network element it provides under that agreement to

[3] The Commission is of the opinion that BellSouth's proposed *in camera* review of the separate agreement contemplated by Section 1.1.2 of Page 2 of Attachment 2 of the interconnection agreement submitted for review would not adequately provide for an analysis of whether such a separate agreement would be discriminatory as to other carriers as contemplated by §252(e)(2)(A)(i) of the Act.

any other requesting telecommunications carrier upon the same terms and conditions as those provided in the approved agreement. If BellSouth and Access One are allowed to enter a separate agreement governing the provision of certain Unbundled Network Elements which is not submitted for Commission approval pursuant to the requirements outlined above, competing providers would be unable to ascertain and elect to adopt the terms and conditions of such an agreement as contemplated by §252(i) of the Act.

In conclusion, the Commission finds that approval of the negotiated interconnection agreement entered between BellSouth and Access One on April 16, 1999 and submitted to the Commission for approval on April 19, 1999 would create an avenue for discrimination against telecommunications carriers who are not parties to the agreement. The disputed language of §1.1.2 of Page 2 of Attachment 2 of that agreement would effectively preclude open review of all the Network Elements BellSouth will provide Access One as well as the terms and conditions under which those Network Elements will be provided. Such a result would be contrary to the review process established by §§252(a) and (e) of the Act. Additionally, the disputed language would lead to a result contrary to §252(i) of the Act due to the fact that competing carriers would be unable to avail themselves of all the Network Elements which BellSouth has agreed to make available to Access One at the terms and conditions under which BellSouth will provide those items to Access One. We accordingly conclude that approval of the agreement with the disputed language would be contrary to the public interest, convenience and necessity. We do, however, urge BellSouth and Access One to resubmit a negotiated interconnection agreement which encompasses the entirety of the agreement reached between the parties at their earliest convenience.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That based on the above reasoning, the negotiated Interconnection agreement entered between BellSouth Telecommunications, Inc. and The Other Phone Company, d/b/a Access One, Inc. on April 16, 1999 and submitted to the Commission for approval on April 19, 1999 is

hereby rejected as being discriminatory and contrary to the public interest, convenience and necessity.

IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this cause is hereby retained for the issuance of any further order or orders as may appear to be just and reasonable in the premises.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 15th day of July, 1999.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPROVAL OF THE INTERCONNECTION AGREEMENT NEGOTIATED BY BELLSOUTH TELECOMMUNICATIONS, INC. AND THE OTHER PHONE COMPANY D/B/A ACCESS ONE COMMUNICATIONS, INC. PURSUANT TO SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996	))))))))	CASE NO. 98-165

ORDER

On May 1, 1998, the Commission approved a resale agreement between BellSouth Telecommunications, Inc. ("BellSouth") and The Other Phone Company, Inc. d/b/a Access One Communications, Inc. ("Access One"). On April 9, 1999, the Commission approved an interconnection agreement between BellSouth and Access One. On April 1, 1999, BellSouth and Access One submitted to the Commission an amendment to their interconnection agreement. However, on April 20, 1999, prior to Commission approval of the April 1, 1999 amendment, BellSouth and Access One notified the Commission of the cancellation of the aforesaid interconnection agreement and amendment and submitted to the Commission a renegotiated interconnection agreement. This renegotiated interconnection agreement, executed April 16, 1999, is the subject of this Order.

On June 7, 1999, the Southeastern Competitive Carriers Association ("SECCA"), whose members include ITC Deltacom, Inc.; IGC Communications; MCI WorldCom; e.spire

Communications; Business Telecom, Inc.; Competitive Telecommunications Association; Time-Warner Telecom; Next Link Telecommunications Resource Association; Quest Communications; AT&T of the Southern States; and State Communications, filed comments regarding one section of the renegotiated agreement. Section 1.1.2, found at Page 2 of Attachment 2 to this agreement submitted April 20, 1999, contains the portion contested by SECCA and states in pertinent part:

> BellSouth is willing to provide as a discretionary offering and above and beyond its obligations under the act, the engineering and technical expertise necessary to combine certain unbundled Network Elements on behalf of Access One for the purpose of Access One providing an end to end telecommunications service over BellSouth's Network Elements. Such professional services shall be pursuant to a separate agreement. This offer to pursue a separate agreement is only valid under the condition that its inclusion by reference does not subject the separate contract to regulation by federal or state commissions. Any request by either party to a regulatory body to arbitrate conditions of the separate agreement will invalidate this offer.

SECCA contends that the omission of the portion of the agreement relating to the combination of network elements precludes review by third parties and by the Commission, in violation of Section 252 of the Telecommunications Act of 1996. SECCA argues that under Section 252(e) a state commission reviews any interconnection agreement adopted by negotiation. Section 252(a) requires agreements regarding interconnection, services, or network elements to be submitted for review. Lastly, SECCA argues that the failure to submit this portion of the agreement denies competitors the ability to elect provisions contained in any interconnection agreement between an ILEC and a CLEC as required by Section 252(i). Without the ability to pick and choose, or indeed even to read the agreement, SECCA asserts that it is unprotected against discrimination by BellSouth.

On June 15, 1999, BellSouth responded to SECCA's comments. BellSouth argues that it can enter a separate, voluntary agreement outside of its interconnection obligations under the Telecommunications Act of 1996. According to BellSouth, this "side agreement" relates to the combination of certain unbundled network elements and not to the provision of network elements that are already combined. BellSouth argues that, because the Act does not require it to combine UNEs, a professional services arrangement between utilities regarding the combination of UNEs does not fall under BellSouth's obligations regarding the Telecommunications Act of 1996. Further, BellSouth contends that it would voluntarily offer a similar arrangement to any other carrier and offers to supply a copy of the separate agreement to the Commission for its review, subject to proprietary treatment.

Section 252 of the Telecommunications Act grants broad statutory authority to state commissions to review interconnection agreements. Subsection (a), coupled with Subsection (e), of Section 252 clearly indicates that the Commission must approve any interconnection agreement adopted by negotiation.

Section 252(a)(1) further provides that agreements reached through voluntary negotiations shall include "a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement" and that the agreement shall be submitted to the state commission under Subsection (e). (Emphasis added). Matters contained in the separate agreement contended herein regard services provided by BellSouth to Access One and thus fall squarely within the definition of Section 252(a). Section 252(e)(1) further states that "any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the state commission."

Moreover, this section provides that a state commission shall "approve or reject the agreement with written findings as to any deficiencies."

Based on the failure of BellSouth and Access One to provide their agreement for services related to network elements, the Commission finds that the partial agreement submitted is deficient and must accordingly be rejected. Because the agreement does not contain all matters agreed to relating to services provided by BellSouth to Access One, telecommunications carriers who are not a party to the agreement have suffered discrimination. Section 252(i) requires a local exchange carrier to make available "any interconnection, service, or network element provided under an agreement to which it is a party to any other requesting telecommunications carrier at the same terms and conditions as those provided in the agreement." The confidential nature of the separate agreement regarding combination of network elements precludes this mandated availability. Accordingly, the agreement is not in the public interest.

IT IS THEREFORE ORDERED that the April 20, 1999 agreement between BellSouth and Access One is hereby rejected for the reasons described herein.

Done at Frankfort, Kentucky, this 30th day of June, 1999.

By the Commission

ATTEST:

_____

Executive Director

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-55, SUB 1144

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Resale Agreement Between BellSouth	)	ORDER ON NEGOTIATED
Telecommunications, Inc., and The Other	)	INTERCONNECTION
Phone Company, d/b/a Access One	)	AGREEMENT

BY THE COMMISSION: On April 22, 1999, BellSouth Telecommunications, Inc. (BellSouth), and The Other Phone Company, d/b/a Access One (Access One) filed an interconnection agreement between those two companies for Commission approval.

On May 20, 1999, AT&T Communications of the Southern States, Inc. (AT&T), filed a Petition to Intervene and Motion to Require Filing of Complete Agreement. An Order was issued on June 3, 1999, allowing AT&T to intervene. Also, on June 3, 1999, the Southeastern Competitive Carriers Association (SECCA) filed comments in this docket. On June 10, 1999, BellSouth filed its Response to AT&T's Petition to Intervene and Motion to Require Filing of Complete Agreement, and MCImetro Access Transmission Services, LLC (MCImetro) also filed a Petition to Intervene. On June 14, 1999, an Order was issued allowing MCImetro to intervene. SECCA also filed a Petition to Intervene, on June 17, 1999, which was allowed by Order of June 18, 1999.

The Commission considered the agreement at its Regular Commission Conference of June 21, 1999. Paragraph 1.1.2 of Attachment 2 of the agreement cites a separate agreement ("the separate agreement") that exists between the parties that according to BellSouth is not subject to regulation by federal or state commissions. The Public Staff pointed out that Section 252(a) of the Act clearly states that "an incumbent local exchange carrier may negotiate and enter into a binding agreement...without regard to the standards set forth in subsections (b) and (c) of Section 251," and that "(t)he agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section." The Public Staff recommended that an Order be issued requiring BellSouth to file, not later than June 23, 1999, the separate agreement for approval or rejection and that the agreement filed on April 22, 1999, should be approved only after the separate agreement is filed and found to be reasonable, and rejected if the separate agreement is not filed.

Representatives appeared at the Regular Commission Conference and made statements on behalf of BellSouth in opposition to the Public Staff's recommendation and on behalf of AT&T and SECCA in support of the Public Staff's recommendation.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that the Public Staff's recommendation should be approved. The Commission concurs in the legal position and reasoning offered by the Public Staff regarding this issue. The separate agreement addresses a matter which, under the Telecommunications Act and state law, is properly a part of the negotiated interconnection agreement. The Commission concedes the likely validity of BellSouth's assertion, based on the recent Supreme Court decision, that the currently effective rules of the Federal Communications Commission (FCC) do not require BellSouth to provide certain combinations of network elements, so long as there is no conflict with BellSouth's obligation to not separate already-combined network elements under reinstated FCC Rule 315(b). Nevertheless, once BellSouth, either voluntarily or as required by law, offers to provide permissible services and such services are accepted by a competing local provider, they must be made part of the negotiated interconnection agreement which is filed for review and approval or rejection by this Commission pursuant to Section 252 of the Telecommunications Act.[1] The Commission further notes that G.S. 62-142 requires that all contracts and agreements between public utilities as to rates shall be submitted to the Commission for inspection so that it may be seen whether or not they are a violation of law or the rules and regulations of the Commission. Accordingly, the separate agreement between BellSouth and Access One must be filed.

IT IS, THEREFORE, ORDERED that BellSouth shall, not later than Friday, June 25, 1999, file the separate agreement for approval or rejection and that the agreement filed on April 22, 1999, shall be approved in whole or in part only after the separate agreement is filed and the agreement is found to be appropriate under the Telecommunications Act of 1996, and rejected if the separate agreement is not filed.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of June, 1999.

NORTH CAROLINA UTILITIES COMMISSION

Cynthia S. Trinks

Cynthia S. Trinks, Deputy Clerk

mu060399.01

Commissioner Owens did not participate.

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[1]Interestingly, BellSouth indicated on page 5 of its response filed June 10, 1999, that it "would voluntarily offer similar arrangements to any other carrier, including AT&T." This concession on the part of BellSouth further bolsters the conclusion that the separate agreement should be filed.